REVIEW PERFORMANCE OF THE BOARD OF VETERANS' APPEALS

HEARING

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

JUNE 24, 1982

Printed for the use of the Committee on Veterans' Affairs

Serial No. 97–70

U.S. GOVERNMENT PRINTING OFFICE

97-055 O WASHINGTON : 1982

HV61-33

COMMITTEE ON VETERANS' AFFAIRS

G. V. (SONNY) MONTGOMERY, Mississippi, *Chairman*

DON EDWARDS, California
JACK BRINKLEY, Georgia
RONALD M. MOTTL, Ohio
BOB EDGAR, Pennsylvania
SAM B. HALL, JR., Texas
DOUGLAS APPLEGATE, Ohio
MARVIN LEATH, Texas
WILLIAM HILL BONER, Tennessee
RICHARD C. SHELBY, Alabama
DAN MICA, Florida
THOMAS A. DASCHLE, South Dakota
BOB STUMP, Arizona
WAYNE DOWDY, Mississippi
PHIL GRAMM, Texas
AUSTIN J. MURPHY, Pennsylvania
BYRON L. DORGAN, North Dakota
ANTONIO WON PAT, Guam
JOHN PAUL HAMMERSCHMIDT, Arkansas
MARGARET M. HECKLER, Massachusetts
CHALMERS P. WYLIE, Ohio
ELWOOD HILLIS, Indiana
HAROLD S. SAWYER, Michigan
GERALD B. H. SOLOMON, New York
JIM JEFFRIES, Kansas
BOB McEWEN, Ohio
JIM DUNN, Michigan
CHRISTOPHER H. SMITH, New Jersey
ALBERT LEE SMITH, JR., Alabama
DENNY SMITH, Oregon
MARK D. SILJANDER, Michigan
JOHN L. NAPIER, South Carolina
JAMES L. NELLIGAN, Pennsylvania

MACK FLEMING, *Chief Counsel and Staff Director*

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

DOUGLAS APPLEGATE, Ohio, *Chairman*

SAM B. HALL, JR., Texas
G. V. MONTGOMERY, Mississippi
JACK BRINKLEY, Georgia
WAYNE DOWDY, Mississippi
AUSTIN J. MURPHY, Pennsylvania
MARVIN LEATH, Texas
CHALMERS P. WYLIE, Ohio
JOHN PAUL HAMMERSCHMIDT, Arkansas
ALBERT LEE SMITH, JR., Alabama
DENNY SMITH, Oregon
MARK SILJANDER, Michigan
JOHN L. NAPIER, South Carolina

CONTENTS

JUNE 24, 1982

	Page
Review Performance of the Board of Veterans' Appeals	1

STATEMENTS OF COMMITTEE MEMBERS

Chairman Applegate	1

WITNESSES

Brinsky, Gabriel P., national service and legislative director, AMVETS	12
Prepared statement of Mr. Brinksy	29
Eaton, Kenneth E., Chairman, Board of Veterans' Appeals, Veterans' Administration	2
Prepared statement of Mr. Eaton	21
Heilman, John F., national legislative director, Disabled American Veterans	17
Prepared statement of Mr. Heilman	34
Magill, James N., special assistant, national legislative service, Veterans of Foreign Wars	18
Prepared statement of Mr. Magill	45

REVIEW PERFORMANCE OF THE BOARD OF VETERANS' APPEALS

THURSDAY, JUNE 24, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION,
PENSION AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room 334, Cannon House Office Building, Hon. Douglas Applegate (chairman of the subcommittee) presiding.

Present: Representatives Applegate, Hall, Dowdy, Smith of Alabama, and Napier.

OPENING STATEMENT OF CHAIRMAN APPLEGATE

Mr. APPLEGATE. Good morning ladies and gentlemen. The subcommittee will be in order.

Today, we are holding an oversight hearing on the operation of the Board of Veterans' Appeals. Without a doubt, this Board, despite its relatively small size, has about as much visibility to our veterans as any part of the Veterans' Administration.

In the past few years, the Board has been unable to issue their decisions within a reasonable period of time, and the record in this regard is growing worse.

I don't mean for this to be a reflection on the chairman or his members. The volume of appeals increases from year to year, and none of us see any reasonable prospects of a decline in the number of appeals.

Obviously, the Administrator, as well as the Congress, must make a decision to either take some action to address the problem, or to simply let the backlog grow.

Today, we want to hear from the Veterans' Administration on what caseloads they are facing, the extent to which it has increased in the recent past, and their projections for the future.

I would expect that the record that we establish today will be helpful to the Administrator by bringing out the deterioration of the service, so that he can consider taking action, either by internal reallocation of resources, or by requesting legislation or appropriations.

Also, the subcommittee will be in a better position after this hearing to make recommendations or to propose legislation which may be required to improve timeliness of the Board's operations.

I have a copy of a memorandum issued by the White House Budget Review Board, Ed Meese, Jim Baker, and Dave Stockman, which would appear to prevent or inhibit the various Federal agency representatives from commenting on proposals which would increase the budget, unless the proposals were made by the administration.

This memorandum could have a rather chilling effect on Government witnesses if they are asked about legislative proposals which have budgetary impact. For this reason, I am submitting a copy of the White House memorandum which will, without objection, be made a part of this hearing record.

[The memorandum follows:]

THE WHITE HOUSE,
Washington, March 29, 1982.

Memorandum for Heads of Executive Departments and Agencies.
From: The Budget Review Board: Edwin Meese III; James A. Baker; David A. Stockman.
Subject: Congressional Inquiries About Spending Increases.

In many instances, representatives of your agency have been or will be asked by Committees of the Congress how the agency might spend funds provided at levels in excess of the President's budget request. In the past, agencies have dealt with such requests in an ad hoc fashion. Because responses to such requests run the risk of having the President's budget misinterpreted, such responses should not be provided.

The purpose of this memorandum is to inform you that the Office of Management and Budget has revised OMB Circular A-10, which controls Executive Branch communications with the Congress about the budget, to ensure that all Executive Branch personnel who communicate with the Congress about the budget are informed of the Administration's policy in this area.

Neither this memorandum nor the revision to OMB Circular A-10 is intended to prohibit Executive Branch personnel from communicating with the Congress about the likely effect of decreases below the President's budget request.

Mr. APPLEGATE. Our first witness today will be Mr. Ken Eaton, who is the newly appointed Chairman of the Board of Veterans' Appeals. If you will come on right up here with your members, Mr. Eaton.

Mr. Eaton, I would say that this is sort of a first for both of us, your first appearance before this committee as Chairman and my first hearing as the subcommittee chairman.

If you will introduce those accompanying you, you may proceed in any manner you wish. And if you wish to summarize, your statement will, without objection, be made a part of the record.[1]

STATEMENT OF KENNETH E. EATON, CHAIRMAN, BOARD OF VETERANS' APPEALS, ACCOMPANIED BY JAMES DERHAAG, EXECUTIVE ASSISTANT

Mr. EATON. Thank you very much, Mr. Chairman. It is a pleasure to be here. I would like to introduce Mr. Jim Derhaag, sitting beside me here, and he may assist me in certain statistical matters, if we get into any real detail as to what is involved here.

As you know, I have been Chairman for a relatively short time. The Board of Veterans' Appeals, in my opinion, is really doing a fine job right now in getting out decisions. As a matter of fact, while our resources would estimate that we would do approximately 35,000 appeals for 1982, fiscal year, I believe it is safe to say that

[1] The prepared statement of Mr. Eaton appears on p. 21.

because of several arrangements that we have made internally, we now expect that we are going to do upward of 36,000 this year, which is a great number of appeals, to say the least.

Unfortunately, even though we do 36,000 this year, we still will fall further behind. They are coming in at such a high rate, I believe it will be well over 40,000 this year, again.

I suppose there is a number of reasons for that. It may be just the litigious nature of our society. I would remark that the total number of appeals is still really a drop in the bucket as far as the number of claims being filed.

There is something like 2.5 million claims filed in the regional offices every year. Normally, they appeal only 1.5 to 2 percent of all those claims. It is now up to 2.5 percent, and it is this figure that is causing such a volume for us at the Board of Veterans' Appeals.

So, as I am sure you know, and as you have already remarked, we are getting behind, our response time is growing each year. We are doing the very best we can, I believe, with the resources. We have done a number of things to increase the number of appeals we are doing.

We have actually stretched our resources so that we are really operating 17 sections, when we have the resources for only 16. In essence, I believe these are the important things that I wanted to tell you here today about our response time and the reason why we are getting a little further behind each year.

Mr. Chairman, this concludes my remarks.

Mr. APPLEGATE. Thank you, Mr. Eaton. I guess your 17th section, as I understand, is sort of transferring from other sections, sort of borrowing from one pocket into the other.

Mr. EATON. We are using, to some extent, our senior attorneys and retired annuitants—retired Board members—for this purpose as acting Board members. We don't have enough Board members to run 17 sections at the present. We don't have the resources to do that, nor do we have the legislative authorization to go to over 50 Board members, at any rate.

But, yes, we do use a lot of senior attorneys and a few retirees for this purpose, and it does help us to get out more cases.

Mr. APPLEGATE. Thank you, Mr. Eaton.

The gentleman from Texas, our former chairman.

Mr. HALL. Thank you, Mr. Chairman, I congratulate you for the job you are going to do as chairman of this committee. I will help you in any way I can, you have got a tremendous staff, as I have already told you this morning; Arnold Moon, who sits between us, is one of the top men in this area and has been, beyond the memory of man to the contrary notwithstanding, however long that is.

Mr. Eaton, do you have enough members—what do you have, 50 members of the Board now?

Mr. EATON. Well, that is our extreme limit. We are, right now, at 48.

Mr. HALL. Do you need more people?

Mr. EATON. If we are to meet the number of appeals that are coming in and prevent further increase in the response time, we would need further people. Either that or some drastic method of

cutting back on our decisionmaking process, which, of course, I think most everyone would agree, is not the desirable method.

I might add that while we have been doing a few things to cut back slightly on the time it takes to prepare the document itself, we have not permitted any cutback in the time it takes to deliberate and review the decision to make sure that we are getting the right result.

Mr. HALL. Have you ever given any thought to having an appeal to the courts? Would that help matters any or not?

Mr. EATON. I don't believe that it would help the response time in any way. As a matter of fact, we anticipate that if there is a form of judicial review, that it will require further deliberation on our part, more reviews, remands, additional problems for us.

Mr. HALL. From your statement, on the first page, you state from the time that he or she files a notice of disagreement, it now takes more than 14 months on an average before there is a decision.

What do you think it would take, in your setup, to shorten that 14 months?

Mr. EATON. If we could get the decisions out as fast as they come to us, we should be able to do the entire process in 10 months. That, I believe, would be an optimum time. I believe that the first 7 months of that are very difficult to alter. There are a lot of delays that are not attributable to any individual or anyone.

There is a hearing process; reexaminations; reviews of all kinds that take a lot of time and preparation. So the first 7 months, which are mainly in the field, cannot really be changed, in my opinion, to any extent.

Then, after it is ready to come to the Board, I don't think we could shorten it more than about 3 months.

Mr. HALL. How could you shorten it by 3 months? What would it take to shorten it?

Mr. EATON. There are several possibilities, but I believe that the best alternative is additional resources.

Mr. HALL. Would that mean more people?

Mr. EATON. Yes.

Mr. HALL. How many more would you need? Or can you answer that by reason of this letter we have from Ed Meese and Baker?

Mr. EATON. I, of course, cannot give you any information which would encourage a change in the budget. I can give you some figures.

Mr. HALL. Well, you are paraphrasing the letter that I have here from Meese and Baker and Stockman.

Well, I want to ask you directly: How many more people, or what would it take to reduce that 3 months, whether it breaks the budget, or whether it doesn't? I am asking the question.

Mr. EATON. It is my estimate that if we—we are presently at 16 sections—it is my estimate that if we were to have 19 sections, over a period of 3 to 4 years, we would have that down to current operation.

Mr. HALL. You have 16 sections——

Mr. EATON. Of the Board, that is correct.

Mr. HALL. And you need 19 sections.

Mr. EATON. Yes. That is approximately correct. You know, some of this depends on what is going to happen in the next couple of years as to the number of appeals.

Mr. HALL. Does that mean that you would need how many more people, in addition to the 50 that is your maximum now?

Mr. EATON. We estimate 18 to 19 per section; that is three more sections; so, let's see—3 times 18 is 54.

Mr. HALL. Fifty-four additional.

Mr. EATON. That is correct, sir.

Mr. HALL. So you need, really, to double about what you have now.

Mr. EATON. Oh, no, sir. We have 16 sections now. And I am suggesting if we had three more sections for 4 years, that I believe we could——

Mr. HALL. How many people to a section—18?

Mr. EATON. Eighteen. Now, this includes—there are actually 10 in the professional section, but it takes about 8 administrative people on the side to help support that section.

Mr. HALL. Well, you say you need three more sections.

Mr. EATON. Right.

Mr. HALL. Which consists of 18 per section.

Mr. EATON. Yes, sir.

Mr. HALL. That is 54 people. You have 48 now.

Mr. EATON. No——

Mr. HALL. People.

Mr. EATON. No, the 48 are the Board members. There are three Board members in a section. But you have 18 people, there are 8 administrative, 10 professional, and out of those 18, there are 3 Board members.

Mr. HALL. So, you would need 16—15 more sections?

Mr. EATON. No, sir. Three more sections——

Mr. HALL. Which would consist of 15 people, because you have got 3 Board members of that 18?

Mr. EATON. Well, there are 3 Board members in the 18.

Mr. HALL. So, that means you would have 15 that you would need in new people, per section?

Mr. EATON. I am sorry, I don't understand. There are 18 people in a section, in a sense; and 3 sections of 18——

Mr. HALL. That is 54 people.

Mr. EATON. Right.

Mr. HALL. I don't care what you call them, that is 54 bodies.

Mr. EATON. Right.

Mr. HALL. Now, do you need 54 additional bodies over and above what you have now?

Mr. EATON. Yes, sir.

Mr. HALL. And how many bodies do you have now?

Mr. EATON. 346.

Mr. HALL. 346. And you think if you had 54 more, you could cut that down from 14 months—you could cut it down by 3 months.

Mr. EATON. In a period of 4 years.

Mr. HALL. Down to 11 months, rather than 14.

Mr. EATON. Right.

Mr. HALL. All right.

97-055 O - 82 - 2

Now, the steps in the appellate process, as I understand it, is that the regional office will write the veteran denying his claim, and advising that veteran he can appeal within 12 months.

Mr. EATON. Right.

Mr. HALL. Then the veteran would send his notice of disagreement, just a simple process, telling the regional office that he disagrees with the decision. Now, that step between that first step and the second step, that depends on the veteran entirely, as I understand it.

Mr. EATON. And that is not part of the response——

Mr. HALL. I understand.

Then the third step is, the regional office will send the veteran a statement of the case. In effect, this is a legal brief of his case, outlining the evidence, what the law and regulations require for a favorable decision, and the VA reasons stating why his claim has been denied.

If the veteran sends in new evidence with his notice of disagreement, then a reexamination and rating may be required, which adds additional time to the appellate process.

Then, after receiving this statement of the case, the veteran can either submit new evidence which will delay the considering of the new evidence, or he can ask for a review by the Board of Veterans' Appeals.

The fifth is the regional office certifies the case is ready for the Board of Veterans' Appeals, and then you have got the decision of the Board.

Where do you have your lost time in those six steps?

Mr. EATON. There is a considerable loss of time, for example, in the preparation of the statement of the case. He may ask for a hearing before the Rating Board. It may ordinarily take a month to prepare a statement of the case, but some individuals will ask for a hearing, and they will have delays in the time it takes to schedule the hearing, and it may be 4 or 5 months before a statement of the case is issued.

All of that goes into the average, you know, of all the veterans. So, there is time delay there. There may be a reexamination scheduled to have him examined again by the Rating Board—by the hospital, let's say.

Mr. HALL. If you had these three new sections, with the 54 people, where would those 54 people enter into the picture of these six steps?

Mr. EATON. Only in that last one.

Mr. HALL. On the decision of the Board.

Mr. EATON. Right. When the case is ready to come to the Board, then any of that response time, that last 7 months, is entirely our responsibility, and it depends on how fast we get those cases out.

And that, of course, depends on the number of people we have doing it.

Mr. HALL. The current law is section 41 of title 38, limits support members to 50.

Mr. EATON. Yes, sir.

Mr. HALL. Of the 18 members of a section, did you say that 3 of those are Board members?

Mr. EATON. Yes, sir, that is correct.

Mr. HALL. All right.

Mr. EATON. We would have nine additional——

Mr. HALL. We would have nine additional Board members.

Mr. EATON. Right.

Mr. HALL. To increase from 50 to 59.

Mr. EATON. Well, actually, right now we have 48, so 9 more would be 57.

Mr. HALL. All right.

Mr. EATON. Which, of course, the statute would not permit.

Mr. HALL. And you think if you had that, you could cut it over a period of years, from 14 months to 11 months.

Mr. EATON. I believe so.

Mr. HALL. Have you made such a request for additional people?

Mr. EATON. The Administration is aware, yes, of this situation.

Mr. HALL. Thank you. I yield back my time.

Mr. EATON. Perhaps I could make one further remark. I believe it might be helpful. I would add that for fiscal year 1982, originally, our resources were limited to 15 sections. But due to help from the Administrator, he provided us, out of his—you might say within the funds, resources of the Administration itself—he provided us with the funds for an additional section, which gives us our 16 sections. That has been very helpful, and has helped us to get out the number of cases that we have—that we are getting out here in 1982.

Mr. HALL. I have been handed a statement that the regional office takes about 7 months to handle their portion of this appeal. Do you consider that too long a time for them to have?

Mr. EATON. Well, I don't have complete expertise in this area. I am quite familiar with what goes on in those offices, and in my opinion, that is a reasonable length of time. When you consider the number of delays that are not the responsibility, in a sense, of the field office.

For example, there is a phase there that we didn't discuss. After the veteran receives his statement of the case, he may wait 6 or 8 months on occasion. Usually he does not. But on occasion, he will wait 6 or 8 months before he files his substantive appeal.

All of that time, well, it is really the responsibility of the veteran; it is not any part of the VA.

Mr. HALL. You are not taking into consideration, in your 14 months, anything that the veteran may do that transpires back home.

Mr. EATON. Yes, sir, we are. And that is an example of it. If he delays 6 months between sending—between receiving the statement of the case and sending his substantive appeal, that is counted in this time, on this average response time of those months to prepare the case for the Board of Veterans' Appeals.

Mr. HALL. Well, if you picked up nine more members of your Board, that is not going to affect how rapidly the veteran does his part is it?

Mr. EATON. It doesn't have anything to do with that. I was only referring to this first 7 months, now, before the case is ready to come to the Board. Some of that 7 months, we were questioning whether or not the regional office could do that quicker.

And I suggested that they could not. There is not much that could be done to speed that up. And that doesn't have anything to do with the BVA.

Mr. HALL. Thank you, Mr. Eaton. I yield back the balance of my time.

Mr. APPLEGATE. Thank you.

Just sort of following up on that. Is legislation required to permit an increase in the level of members of the Board, and anyone else? And if so, do you intend to submit or make a request for legislation to implement that?

Mr. EATON. I believe it is definitely necessary to have legislation to increase to more than 50 Board members. This matter is under consideration at the present time, and that is the best I can advise you regarding proposed legislation.

But I do believe it is, if it were to go over 50, it has to be changed by statute. There are no other personnel that are affected by statute such as the Board members. I am talking about within the BVA.

Mr. APPLEGATE. OK. I see one of the members of minority came in, Mr. Smith of Alabama.

Mr. Smith, do you have some questions?

Mr. ALBERT LEE SMITH. Thank you, Mr. Chairman.

I appreciate very much Mr. Eaton, what you and your group do and the quality of decisions, and your effort to solve these as expeditiously as possible. I understand your transcription work is accomplished in Wilkes-Barre, Pa. Does that system work very well for you?

Mr. EATON. I am proud of that. It is probably the best part of the whole operation. They really do a great job.

Mr. ALBERT LEE SMITH. I am a new member on the Veterans' Affairs Committee, and trying to learn as quickly as I can and understand the in-workings of what you all are trying to do; why I appreciate having the opportunity to hear this dialog this morning, and better understand your problems, and how you are trying to solve those problems.

Mr. APPLEGATE. Thank you.

Thank you, Mr. Smith.

The law imposes the same decision format requirements regardless of the complexity of the appellate issue. You think that there should be some relaxation of requirements of the more simpler issues? And if you do, do you intend to propose any such changes?

And if not, have you given in-depth consideration to the question?

Mr. EATON. Yes, sir; on an informal side, policy side, we have established somewhat of a new procedure, whereby, in the simpler cases, we prepare a format that restricts the evidentiary portion to some extent, summarizes it much more than in the more complex case.

And, of course, we still prepare findings of fact and conclusions of law which are required by law. But the decision itself, the document, is growing a bit shorter, if I may say so, in these simple cases.

We are trying to encourage that, but we have to be careful that we don't go overboard in making a document that isn't self-ex-

planatory. We need, of course, all the law, and the important facts have got to still be cited, and we want, certainly, the contentions of the veteran and the reasoning for the decision to be adequately stated.

So, we have certainly not cut back in most portions of the decision, but in a certain evidentiary portion, we are trying to summarize a bit more.

And I would say that in perhaps as many as 30 percent of the cases, we are trying to cut maybe one page out of six or seven pages of the decision document itself.

Mr. APPLEGATE. Let's go back a little bit to the first 7 months. As I understand, the law gives claimants 60 days to respond to the statement of case. But do you really feel that it should take 2 months to issue this statement of the case? Another 3 months are needed to review the substantive appeal and get it ready to forward to BVA.

Is there any way that that could be shortened considerably. That seems like an excessively long time.

Mr. EATON. Well, I am sure it sounds that way, but there are a number of things that have to be done during that time. And as I explained a moment ago, some of that time is not even the responsibility of the VA. It can be the veteran's responsibility. He may delay the time it takes to send in his substantive appeal. And that is part of that 3-month period after the statement of the case.

He may ask for a hearing during the first 2 or 3 months, and after he asks for the hearing, well, he can't make it the first time, and they reschedule it, all that time counts on this time—once a person files his notice of disagreement, we count every day until we get out the decision as part of this overall response time of 14 months.

And no matter what the delays are caused by, why, it is in our average computation. So there are many things to consider and, in my opinion, it would be very difficult for them to—I am sure they could cut off a few days here or there in appeal, but I don't believe it could be significantly shortened. I should comment that Dorothy Starbuck's office would be better equipped to answer that question than I.

Mr. APPLEGATE. The review cases, it looks like, this year, is going to be increasing substantially, partially because of economic conditions, I think as you pointed out. But as that has gone over the years, that has had a tendency to cut back, too, as times got a little better.

What happens after you get 19 sections; do you cut back automatically, or——

Mr. EATON. Yes, that has happened before. We have increased and then gradually, by attrition, cut back. When I estimate this three sections which—I am not talking about budgets now—I am talking about the number of people necessary to do so much work.

These estimates are a little on the conservative side. I would honestly believe that this rate of appeal might slow down, and that is sort of in this computation. If they keep going up at the rate they are going up, even 19 sections wouldn't be able to handle it, to be honest with you.

But we figure that after a few years, if it continues going up, by then, we can tell you again. But if it starts going down, why then, by attrition, in a couple of years, we would get back to current, and we would be able to handle it, and we do drop back and cut back on our sections when we find that we are getting current.

Mr. APPLEGATE. How long has it been now since there has been somewhat of a rapid rise? Just since the beginning of this year, or over the past 12 months?

Mr. EATON. I would say about 3 years.

Mr. APPLEGATE. About 3 years?

Mr. EATON. Just a moment. Really, it has been going up pretty rapidly since 1975. I believe that in the last 3 years, it has even increased in the degree—even more. It has been a very rapid thing in the last 3 years, but for the last 6 years it has been going up.

Mr. APPLEGATE. Since that is tied into the economic indicators as to how the country is going to go, how soon do you expect it to drop?

Mr. EATON. I really—I honestly couldn't say. I have noticed that we have used this economy situation as part of the reason for appeals for years, and I suppose there is something to that.

I know it has to do with claims, but I am not convinced that the economy is the sole reason for this. I believe that there are more people fighting appeals of all sorts today, and that has a lot to do with it.

I also believe that the service organizations are highly trained, and preparing themselves better for the appellate workload than they used to, and I think this will cause more appeals.

Mr. APPLEGATE. In line with that, do you notice any increase in the past 2 or 3 years in personal hearings?

Mr. EATON. I think it is about the same, to the best of my knowledge. Part of that, of course, could be, you might say, our fault. We get a backlog of hearings, and I suppose that if it gets too long, it discourages people after a while, and they may drop out.

We do get a lot of no-shows. They ask for a hearing; we schedule it; they tell us they are coming; and then at the last minute, they don't show. And this extends our time limit on the number of requests.

But as to total number, about 2 or 3 years ago, we did increase the number of appeals we were doing, the number of hearings here at Washington, because we weren't keeping up, and since then, to the best of my knowledge, it has stayed about the same in the last 2 or 3 years.

Mr. APPLEGATE. One more question.

I am told that the Department of Veterans Benefits' workload is light, light enough so that they have been able to initiate several reviews involving thousands of cases. Couldn't some of that time be devoted more profitably to reduce the time they now delay on appeals?

Mr. EATON. Well, I don't know that I am really well-equipped to answer that, but it is my opinion that they are taking whatever time is necessary to prepare the appeals now. I believe that these delays are not due to any lack of staffing or putting the case off in the field.

I believe that they are getting at them as soon as they can, but there are these inevitable delays that they cannot avoid. And I would like to defer, in part, to Dorothy Starbuck, on that, as she might be able to answer that better than I.

Mr. APPLEGATE. OK, well I certainly thank you very much, Mr. Eaton. I know that it is a problem, and it is continuing to be even more troublesome, and I know that it will, as time goes on, and we are going to have more and more veterans that are going to be coming forth as claimants, and I know that each of the members share my concern, because I am sure they do, as I do, we work these veterans claims, we help them in every way that we can, and so we sort of suffer through these long periods of time along with them.

And I know that you do have a problem, and I hope that we are able to resolve it, be it through additional personnel or whatever way. And I hope that that is the way to go about getting a result and expediting them, and I think that is what we are going to have to do, regardless of the cost.

And I don't think it is going to be that much of a cost factor. I think the benefits far exceed that. The gentleman from Alabama?

Mr. ALBERT LEE SMITH. I know that there is some effort underway in the Veterans' Administration to upgrade the data processing systems that are being used and to help speed up the delivery of information from the various parts of the country.

What impact, and to what extent, and I apologize for not being here for your testimony, but to what extent do you think this upgrading under review and under consideration will have on your process?

Will this cut down much time when they modernize and upgrade the computer system?

Mr. EATON. Well, if you are referring, for example, to the TARGET system and that area of which the adjudication divisions are, certainly we have a great deal of computer information, but I don't know that it is very helpful in the appellate process.

It certainly provides a good deal of quick information, and helps them in preparing their decisions. I don't know that it helps us as far as such matters as the hearings or statements of the case or getting the case to the Board of Veterans' Appeals.

We do have a relatively new computer system that we use to keep track of the appeals. It is located in the field, and it gives us statistics that are very quickly available now as to the number of appeals that are sitting out in the field, and which ones should come first, all that sort of thing is automated now.

It makes it much more efficient, but I don't believe it actually speeds up the process of getting those appellate decisions out.

We have some word processing equipment that we are using or trying to use at the Board of Veterans' Appeals now, but with the number of decisions that we put out every day and every week, we have not yet come up with a system that really is adequate for our needs.

Mr. ALBERT LEE SMITH. Thank you.

Mr. APPLEGATE. Thank you, Mr. Smith.

The gentleman from Mississippi, Mr. Dowdy.

Mr. DOWDY. Thank you very much, Mr. Eaton, I appreciate your taking the time to come, informing us. We know that it is a problem, and we hope to resolve it.

Mr. EATON. Thank you very much.

Mr. APPLEGATE. We also have with us today Mr. Gabe Brinsky, who is the national service and legislative director of AMVETS.

STATEMENT OF GABRIEL P. BRINSKY, NATIONAL SERVICE AND LEGISLATIVE DIRECTOR, AMVETS

Mr. BRINSKY. Good morning, Mr. Chairman, members of the committee. AMVETS appreciates this opportunity to appear before you today to express its views concerning the performance and workload of the Board of Veterans' Appeals.

Anyone who deals with the veterans' constituency is well aware of the fact that the Board of Veterans' Appeals has a workload problem. Over the past 3 years, the number of appeals received have increased, until today, when it is projected it will total approximately 41,000.

To cope with this situation, the Board has, over the past years, gone from 14 to its present 17 sections.

Even so, the Board is losing ground in the battle of cases. It is projected that for fiscal year 1982, the Board will receive 40,890 appeals. At an average daily output of 96 cases per day, this translates into approximately 14 months of work.

It is not our intention to burden the committee with the same figures furnished in full detail by Mr. Eaton. We would like to comment, however, upon the processing time involved by citing the number of days required on an average to get a decision from the Board.

It takes 478 days, or approximately 14 months, from the time an appellant files his appeal until a decision is entered by the Board of Veterans' Appeals.

It is imperative that something be done to reduce this processing time, which in reality affects due process.

The Board, as I mentioned, has increased the number of sections and attempts to meet the problems created by this work overload. While we believe that adjustments of this type are necessary in order to meet the demands imposed, obviously the solution cannot rest in adding personnel ad infinitum. Other avenues must be searched for and a resort made to other means, at least as temporary measures.

Following World War II, the Board of Veterans' Appeals, then under the chairmanship of Robert L. Jarnagin, was handling approximately 60,000 appears a year with a staff much smaller than we have today.

Of course, the decisions entered at that time were not as developed and were not as lengthy as those which are being promulgated by the Board today. At that time, it wasn't necessary to set forth separately stated findings of facts and conclusions of law.

It wasn't necessary under the controlling laws and regulations, that the controlling laws and regulations be cited in individual cases. It was not necessary to fully explain the rationale or to set forth or evaluate the evidence in the decision.

Today these factors and items must be reflected in the decision because it is mandated by law. This came about by reason of the hearings which were conducted by House Veterans' Affairs Committee primarily on judicial review.

In a sense of compromise, perhaps, it was decided that these mechanisms would at least partially cure what deficiencies existed in the Board's decisions.

When the Board was faced with the tremendous workload and a relatively small group of consultants and Board members to handle it following World War II, I understand that the then-chairman asked the service organizations whether they desired longer decisions and longer processing times, or shorter decisions and shorter processing times.

They opted for the shorter processing time. I cite this historical background to demonstrate only the fact that the position in which the Board finds itself in today is not a unique one, and in fact, the Board has experienced more troublesome periods in terms of caseloads than it does today.

In certain cases, we believe the processing time may be reduced. For example, the Board receives a substantial number of appeals on the issue as to whether the evidence submitted is new and material.

The same issue may have been presented in the same case, perhaps, two or three times before. Under such circumstances, rather than resorting to the usual format of the decision, the Board might dispose of the issue in a one-sentence or one-paragraph finding, and a decision that the evidence submitted does not constitute new and material evidence.

The same is true on questions of whether an appeal has been timely filed. The Board should be able to declare in a one-line sentence that the appeal has not been timely filed, and refuse to assume jurisdiction.

In another area, the law provides that the Board may reconsider its prior decision based upon an allegation of error in law or fact. It should deny reconsideration unless there are specific allegations of error in law or fact rather than merely an expression of a difference of opinion in the evaluation of the evidence.

It would appear that the need for the formal format decision, particularly in service-connected cases, when the decision is allowed, in those cases, it would hardly seem necessary to set forth the controlling laws and regulations giving an evaluation of the evidence.

I am sure that Kenneth Eaton, Chairman of the Board of Veterans' Appeals, and Roger Bauer, Vice Chairman, are aware of the possibilities of the suggestions which I have made today.

They have probably considered them. The purpose for my recitation of these potentials is to offer whatever assistance that we can in helping the Board to accomplish its mission and to urge whatever legislative changes may be required to accomplish them.

That concludes my statement. Thank you.

[The prepared statement of Mr. Brinsky appears on p. 29.]

Mr. APPLEGATE. Thank you very much, Mr. Brinsky. And I might point out, if anybody didn't know, that Mr. Brinsky was a former

97-055 O - 82 - 3

member of the Board. He knows from where he speaks, and has good insight on what is going on.

The gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman.

Thank you, Mr. Brinsky, for your statement. I would like to ask one or two questions, if I might.

On page 5, "The same is true on the question of whether an appeal has been timely filed. A decision setting forth the facts and the controlling laws and regulations may not be necessary." The one line, "A decision as to whether or not the appeal has been timely filed. If so, and refuse to assume jurisdiction," I certainly agree with that.

Your next sentence is what I have reference to. "In another area, the law provides that the Board may reconsider its prior decisions based upon an allegation of error in law or fact."

Are there many instances where the law is in question? Wouldn't it be a factual question that is nearly always in issue?

Mr. BRINSKY. Well, sir, what I was doing there was referring to the specific requirements of the law which provides for reconsiderations. It does stipulate facts or law. But to be specific, in response to your question, I would say, generally, it is factual, rather than legal.

Mr. HALL. So, there really would not be a great deal of time delay in making a determination as to whether or not this matter in question has been brought under the proper law, if that is the way I read that.

Mr. BRINSKY. Yes, sir.

Mr. HALL. If I read if correctly.

Mr. BRINSKY. The thought that I was trying to bring out here was that, while the law provides for reconsiderations where there are allegations of error either in fact or law, many of the requests for reconsiderations do not refer to any errors of fact or law, but instead, express a difference of opinion in the evaluation of the evidence.

And the Board has, in the past, been very liberal in accepting requests for reconsiderations, without specifically requiring that the allegation as to error or fact be demonstrated.

Mr. HALL. How many appeals, estimated of course, would you say take on an adversary relationship between the claimant and the Board?

Mr. BRINSKY. Well, I suppose they are all adversary in a sense. The claimant is looking for an allowance, and the Board has to call the case as it sees it. But, as you know, the Veterans' Administration, in its adjudication of claims, does not have an adversary role. It is there to help the veteran.

And in the same sense, so is the Board of Veterans' Appeals. The Board is there to be sure that the man receives everything to which he is entitled.

Mr. HALL. Well, the main thrust of these hearings today is to try to shorten the time, as I see it, from the time that a veteran gives his notice of appeal until the Board makes a decision.

We are all of the opinion that the 14 months is just too long a time to get a decision. On page 6, second paragraph, you make this statement:

Except in those cases where the evidence is in dispute. And these should be in the absolute minority. There is no reason why the Board should not enter its decision and eliminate the hearing of the evidence and merely proceed to findings of fact and conclusions of law after citing the controlling laws and regulations. If the evidence is in dispute between the claimant and the Board, then, of course, the Board must hear evidence to make the determination * * *

As I understand it. Is that not correct?

Unless they take it from the record and elicit the facts from the record.

Mr. BRINSKY. What I am suggesting here is this, Mr. Hall: There are many cases where the facts are not in dispute, you might think of them as stipulations, really, that is what it gets down to, where the facts are stipulated, whether the claimant has set forth the facts, or makes allegations, or what have you, or whether it comes from some other source, where the evidence is not in conflict, it is accepted.

So where you have no conflict in the evidence, there really is no purpose served in setting it forth and evaluating because if there is no dispute, it evaluates itself.

So, then, all that needs to be done is to make the determination under the controlling laws and regulations, whether these sets of facts do or do not provide for an allowance.

Mr. HALL. Well, if you stipulate the facts, if both the claimants and the Board enter a stipulation that the following set of facts is true and correct, then you have no adversary relationship between the two?

Mr. BRINSKY. No, sir.

Mr. HALL. If you have a stipulation as to the facts, is there ever a time when you could still have an adversary relationship between the two entities, the claimant and the Board?

Mr. BRINSKY. Well, the adversary element would come into play where there might be a disagreement as to what the facts accomplish. And I might, at this point, just clarify one thing. There is no stipulation as such. I was trying to draw an analogy.

The evidence, perhaps, as I say, whether received from the veteran or whatever source, is not controverted, and as such, I was trying to draw an analogy between that kind of a situation and one where legally you have a stipulation of facts.

But, there might be a disagreement as to whether or not a set of facts provide entitlement under a given law. It might be a matter of interpretation of the veteran as to what he believes the law says, and what, in fact, the law does say.

Mr. HALL. Well, that would be a dispute, as I understand it——

Mr. BRINSKY. Yes, sir.

Mr. HALL [continuing]. Between the two. So if you have that dispute, you would have to have evidence presented before you could enter a finding of fact or a conclusion of law, would you not?

Mr. BRINSKY. No, sir, I believe that you could if you accept the facts, and they are not in dispute. Predicate your findings in fact upon that basis.

Mr. HALL. Well, what I am getting at is I read this paragraph, stating you can—that the court would have the authority and right and should have that right, to enter findings of fact and conclu-

sions of law without hearing any testimony. I don't see how you can do that.

Mr. BRINSKY. Well——

Mr. HALL. If the facts were in dispute, even though you have got an agreed statement of fact. You are still going to have to hear evidence, whether it be on the agreed factual stipulation or have the person appear before the Board or whatever procedures they may use. Aren't you still going to have to have evidence presented before you can enter your findings of fact and conclusions of law? Because it won't be based on anything unless you have testimony.

Mr. BRINSKY. Well, of course. Unless there is a personal hearing involved, most of the evidence is comprised of documents and what have you, in what we refer to as a claims folder. It is based on a record.

Now, in the situation you mentioned, where there is a conflict, there are contradictions as to what the evidence is, then, of course, you have to set it forth and evaluate it, because you have to determine which evidence preponderates.

Mr. HALL. Before you could enter your findings——

Mr. BRINSKY. Yes. What I was suggesting, Mr. Hall, was the situation where there is no dispute as to the facts. And your findings of fact is what sets forth what those facts were.

Mr. HALL. Under the present existing law, where you have stipulated, or have a stipulation as to the facts, does the Board have the authority to enter findings and conclusions without having to have any hearings of any kind? Or do they now have to have something else in addition to issuing their findings and conclusions?

Mr. BRINSKY. As far as hearings are concerned, these are granted at the request of the appellant. It is not required under the law that the Board have a hearing with the individual claimant.

If the appellant doesn't request a hearing, the Board goes ahead and considers the case on the basis of the written record.

Mr. HALL. Is that what they do now?

Mr. BRINSKY. Yes, sir.

Mr. HALL. Well, are you saying that they should be allowed to shortcut something that they are not doing in order to eliminate some of this time?

Mr. BRINSKY. Well, the only thing I am suggesting is more or less along the administrative line. They can't, of course, refuse a man a hearing. This is part of due process, and that is mandatory that they schedule if the man asks for it.

All the suggestions that I am making here are administrative, some I believe might require legislation, because of the laws which are on the books today, but it has nothing to do, other than in the administrative area.

Mr. HALL. Thank you very much. I yield back the balance of my time.

Mr. APPLEGATE. Thank you, Mr. Hall.

The gentleman from Alabama, Mr. Smith.

Mr. ALBERT LEE SMITH. No questions.

Mr. APPLEGATE. I have no further questions, either, Mr. Brinsky, but I appreciate your coming before the committee and giving your testimony, and I appreciate it very much. We look forward to seeing you in the future.

Mr. BRINSKY. Thank you.

Mr. APPLEGATE. Our next witness, representing the Disabled American Veterans, is Mr. John Heilman.

STATEMENT OF JOHN F. HEILMAN, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. HEILMAN. Yes, sir, good morning, Mr. Chairman. Let me say it is a pleasure to address you in that fashion; I congratulate you on the decision of your colleagues to elevate you to the chairmanship of this subcommittee. Our people in Ohio were pleased with that, Mr. Applegate.

Mr. APPLEGATE. Thank you.

Mr. HEILMAN. I will summarize my written testimony.

In terms of timeliness and quality of BVA decisions and whether or not appellates are getting full due process, I think the primary point to make is—and this has been made by the BVA witness, Mr. Eaton—the fact that the caseload for the past several years, has been rising dramatically, and BVA is understrength of personnel. They do not have sufficient manpower to handle cases properly.

We have heard that this fact requires quotas being set for the existing 16 sections of BVA, they have a quota for each section of 40 decisions per week, and if you translate that from an 8-hour day, we are talking about 1 hour of review time per decision.

In terms of cases that are complex, involving complex medical and legal issues, we contend that BVA claimants will be getting shortchanged. If you will look at some of the data that I have attached to my testimony, it will illustrate this fact.

Attachment B [1] sets forth the VA appellate workloads for the past decade, 1972 down to the present time. If you just look in 1972, I think a very pertinent piece of data is the number of substantive appeals pending at the end of 1972. The number was 12,760.

BVA, at that time, had 14 sections. If you will drop down to 1981, BVA now has 2 more sections, 16 sections; you will see the number of appeals pending was 31,810. Very dramatic increase and indicative of the fact that their caseload is extremely high.

They are working in a pressure-filled atmosphere, and we contend that this has to have an adverse effect on their decisionmaking process.

I would like to now direct your attention to attachment C in my testimony,[2] Board of Veterans Appeals representation in appealed cases. The figures are given for the types of dispositions allowed, remanded, denied and other.

In my testimony, I point out that in 1973, when BVA had 14 sections, the caseload, compared to today, was relatively low—1973, by the way, is considered to be the peak Vietnam year. If you look at the allowance rate in 1973, it was 13.9 percent.

In 1974 and 1975, as we had heard Mr. Eaton indicate this morning, there was a substantial drop in caseload. Personnel were adequate. As a matter of fact, there were able to cut back on the sections during 1974 and 1975 because of the decrease in caseload.

---

[1] See p. 43.
[2] See p. 44.

We have an allowance rate, in those years, of 14 percent and 14.8 percent. Those three allowance rates for 3 years are the highest in the last decade. Caseload since 1975 has increased dramatically, and although sections have been added to the present 16, we contend that it has not been enough.

The present allowance rate in 1981 was 12.4 percent; it was 12.4 percent in 1980 also. That is the lowest allowance rate in the entire decade. We are simply saying that when you look at the data concerning case disposition, workloads, personnel, you come to the conclusion that an understrength BVA results in an adverse impact on its decisionmaking process.

Veterans are not getting full due process simply because of that fact. A difference of 2 or 3 percentage points in the allowance rate in a given year translates to 400 or 500 cases.

We believe if BVA was up to strength, if they could give more consideration to an individual appeal, perhaps develop the case more properly, if that was called for, we would not see the depressed allowance rate that the data indicates, and we therefore conclude, simply by saying that we would hope that the subcommittee would support increasing personnel for BVA.

In my statement, I have indicted we believe the sections should be increased to 20. Basically, that is the main thrust of my testimony, Mr. Applegate. I would be glad to answer any questions.

[The prepared statement of Mr. Heilman appears on p. 34.]

Mr. APPLEGATE. Thank you very much, Rick.

The gentleman from Texas.

Mr. HALL. I have no questions, Mr. Chairman.

Mr. APPLEGATE. The gentleman from Alabama?

Mr. ALBERT LEE SMITH. I have no questions, Mr. Chairman.

Mr. APPLEGATE. I guess you have covered it well.

Mr. HEILMAN. Thank you.

Mr. APPLEGATE. Mr. Heilman, thank you very much for your testimony. It will be made a part of the record. I appreciate your appearing, and I will look forward to working with you in the future.

Mr. HEILMAN. Thank you.

Mr. APPLEGATE. Mr. Magill, representing the VFW. Yes, there he is. I think we could probably handle that if you would want to summarize, go right ahead.

STATEMENT OF JAMES N. MAGILL, SPECIAL ASSISTANT, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. MAGILL. Thank you, Mr. Chairman, for the opportunity to present the views of the Veterans of Foreign Wars with respect to the workload and performance of the Board of Veterans Appeals.

We would like, at this time, to congratulate you on being elected chairman of this distinguished subcommittee. We look forward to working with you in improving and preserving the benefits that our Nation's veterans have earned.

Mr. Chairman, we of the VFW have no complaints on the performance of the BVA. We believe the Board, for the most part, renders compassionate and fair decisions considering the pressures it faces.

However, we still believe it takes too long to render these decisions. It concerns us that there has been an increase in the number of cases pending at the end of the year, and the length of time in the call-up stage has not decreased.

We believe increasing the number of members on the Board would help reduce these time periods.

Finally, Mr. Chairman, we also believe the remand rate is still too high. The most recent information available to us puts this rate at over 14 percent last year.

This concludes my statement. I would be happy to respond to any questions that you may have, sir.

[The prepared statement of Mr. Magill appears on p. 45.]

Mr. APPLEGATE. Thank you very much, Mr. Magill. We do have your complete statement here, and it will be made a part of the record, without objection.

The gentleman from Alabama, Mr. Smith.

Thank you very much, Mr. Magill, and I think that would cover it pretty well. I think that gives us a very good oversight review of some of the needs, some of the problems we know that veterans are facing, as well as the service organizations as well as the Board itself.

We hope that during the coming year, that we will be able to work together to find the answers. That perhaps we will be able to expedite these claims in a much more reasonable manner.

But we appreciate your testimony. It will be important to us, and we look forward to seeing you at the next meeting.

Mr. MAGILL. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you.

This meeting is adjourned.

[Whereupon, at 10:07 a.m., the subcommittee was adjourned.]

APPENDIX

STATEMENT OF KENNETH E. EATON
CHAIRMAN, BOARD OF VETERANS APPEALS
VETERANS ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
JUNE 24, 1982

Mr. Chairman and Members of the Subcommittee, thank you for inviting me here today to discuss the performance, workload, and response time of the Board of Veterans Appeals. This is my first appearance since I was appointed Chairman.

The Board of Veterans Appeals has the mission to equitably decide appeals under all laws administered by the Veterans Administration and to ensure that appellants are accorded due process of law; that they get compassionate, sensitive, responsive, and sympathetic consideration of their appeals; and that they receive all benefits to which they and their dependents are entitled.

Implicit in our mission is the necessity to efficiently process appeals--in a timely manner. One of my main concerns is the length of time it takes for a veteran to get a final decision on his or her appeal. From the time he or she files a notice of disagreement (NOD), it now takes more than 14 months (on the average) before there is a BVA decision. It takes about 2 months from the receipt of the NOD until the regional office sends a statement of the case. Just shy of 2 more months pass between the issuance of the statement of the case and the receipt of the substantive appeal from the appellant. (This time is controlled by the claimant.) The regional office takes about 3 months to review the substantive appeal and to get it ready to send to the Board. Finally, a little more than 7 months are taken by the BVA to enter its decision.

97-055 O - 82 - 4

Right now, about one-half the time chargeable to the BVA is spent in the field office awaiting callup. We feel that we better serve appellants by holding cases in field stations until the Board is able to handle them:

o Veterans' records are readily available in parent field stations to process other claims, answer questions, and provide other services.

o We are able to keep the number of cases at the Board at the level to assure optimum operations.

VETERANS APPEALS RECORDS MANAGEMENT SYSTEM (VARMS)

Callup procedures are handled through VARMS (Veterans Appeals Records Management System), a Department of Veterans Benefits (DVB) data processing system that monitors progress of veterans' appeals nationwide. VARMS provides positive control of appeals from the receipt of the notice of disagreement through the various steps until final disposition.

Regional offices prepare a code sheet for each notice of disagreement received. This becomes the input document to establish a computer master record in VARMS. As the appeal progresses through each appellate stage, pertinent records are updated to reflect the current status.

The VARMS master record for each claimant contains a data trail of actions taken on the appeal. Included are the dates of:

o Receipt of the notice of disagreement

o Mailing of the statement of the case

o Receipt of the substantive appeal

o Certification to the Board of Veterans Appeals

o Forwarding the appeal to the BVA

In addition, the VARMS master record contains the operating element responsible for processing the appeal, the next suspense date, and the last action taken and date of that action. A punched card is generated by the computer after each update transaction and is mailed back to the regional office. This preprinted and prepunched card, with necessary control data to reenter the system, is used to enter the next change in status or a new suspense date in the master record. VARMS also generates various printouts for the regional offices, Central Office, and the Board of Veterans Appeals.

The callup system utilizes information contained in the VARMS master record. Every month the BVA determines the number of cases to be transferred in the upcoming month. VARMS selects cases that are certified to the BVA, starting with the case with the earliest notice of disagreement, until it has selected the number of cases requested by the Board.

Remands are not handled through these callup procedures--they are sent as soon as development is complete. Also, these procedures do not preclude the transfer of a case involving hardship or an emergency. The decision to transfer a case outside these procedures rests with the Adjudication Officer.

VARMS has been operational as an appeals tracking system for several years. The callup procedures have been in use since November 1979.

BVA WORKLOADS

We have done our best to control workloads and to decide appeals in a timely manner. Each Section of the Board has a goal of 40 decisions per week. At that rate, each Member has an average of 1 hour to review each case. In order for a staff attorney to produce at a level of 100 percent productivity, he or she must complete seven to eight cases each week. However,

for the past 5 or 6 years the number of appeals filed has outstripped our ability to handle them. At this time we see no letup in new appeals. In FY 1981 veterans and other claimants filed a record number--68,183--notices of disagreement. For the first half of fiscal year 1982, NOD's came in at a rate more than three percent greater than a year earlier. We know from experience that we will enter about 58 BVA decisions for every 100 NOD's filed.

APPEALS WORKLOADS

	1979	1980	1981	Est. 1982	Est. 1983
Notices of Disagreement Filed	61,097	63,700	68,183	70,500	70,700
Substantive Appeals Received	35,688	36,483	39,702	40,890	41,000
BVA Decisions Entered	34,972	34,030	33,461	35,000	35,000
Substantive Appeals Pending - End of Period	23,116	25,569	31,810	37,700	43,700

It is interesting to note that the claims workloads of the Department of Veterans Benefits have not risen in step with our appeals. In fact, I understand that some stations are experiencing decreases in claims. Why, then, are appeals increasing? I believe that there are three main reasons for the large increases in appeals:

o First, the relatively rough economic times cause veterans to seek veterans' benefits to supplement their incomes. When turned down by the regional office, they appeal.

o Second, the general increase in litigiousness that is evident in our society has also spread to the veteran population.

o Third, representatives in service organizations are even better trained today and more thorough in their reviews of

veterans' claims. They assist a greater percentage of claimants in pursuing their claims and appeals.

Directly related to the increases in appeals and the greater number of them pending BVA review is an increase in our response time. While the field stations have been able to hold their response times to appeals quite stable, ours has risen sharply:

AVERAGE APPEALS RESPONSE TIMES (DAYS) 1/

	1979	1980	1981	Est. 1982	Est. 1983
In Field Stations	187	195	200	200	200
At the BVA	121	156	227	278	341
Total	308	351	427	478	541

1/ Estimates based on current level of organization and operations of the BVA.

I believe that a reasonable average response time chargeable to the BVA is 100 days--with a maximum time for any individual case held to 180 days.

Please realize that the time spent on particular cases varies widely. Important factors for consideration are whether the appellant has a representative, a formal hearing has been held, the case is complex, and/or there is correspondence or other inquiries to answer.

BVA ORGANIZATION AND STAFFING

An analysis of processing time would be incomplete without a discussion of BVA personnel. The Board of Veterans Appeals has a personnel complement for 16 full Sections. During the peak Vietnam-era years of 1972-1973 the Board of Veterans Appeals had 14 Sections. Following the dramatic drop in appeals in 1974, the Board cut back to 13 Sections in November 1974. Just after that, by March 1975, there was a sharp upswing in appeals--due to the recession. The Board reactivated Section 14 in

July 1975. The increases in appeals continued. The Board formed Section 15 in January 1977--and Section 16 in September 1977. Due to budgetary restraints, we had to reduce the number of Sections to 15 in October 1980. At the beginning of the current fiscal year, October 1981, the Administrator gave us additional people and funds and approved our reorganization back to 16 Sections. In order to try to increase our output of decisions, I have temporarily organized a 17th Section by stripping Members and attorneys from the other Sections.

Each Board Section has three Members. Sixteen of the 17 Sections have two Legal Members and one Medical Member and the other has three Legal Members. (I have detailed Senior Attorneys as Acting Board Members to fill the voids created by adding the 17th Section.) In addition, each Section has six or seven attorneys and a Section secretary. Additional support comes from the Board's Administrative Service. This element--now authorized 142 people--maintains the docket, schedules hearings, transcribes hearings and decisions, handles correspondence, and provides mail and record activities, secretarial service, and similar duties.

QUALITY REVIEWS

We have quality review procedures to monitor professional performance of Board Sections, staff attorneys, and overall quality of appellate decisions.

o Every 3 months each staff attorney is evaluated by his or her Chief Member who uses a form consisting of 20 factors designed to assess the quality of the attorney's performance. These factors cover such areas as accuracy, knowledge of VA law, clarity of written expression, and other basic work characteristics. The extent to which work must be revised, the ability of the attorney to handle complex matters, and contributions he or she made to the Section are also reviewed by the supervisor. In the case of Senior Attorneys (GS-14), their ability to act in a

judicial capacity also is evaluated since they are potential candidates for Board membership.

o We tie the other quality review procedure to our Appellate Index and Retrieval System (AIRS). (In May 1977 it was determined that the Board of Veterans Appeals, under the Freedom of Information Act, was required to index and make all decisions available to the public. We formed AIRS to handle these tasks. Resulting indexes are used by service organizations, student legal aid societies, other case advocates, and by BVA attorneys.) Before they are dispatched, each BVA decision is routed through the attorney-indexers in AIRS. The indexers review the decisions for obvious or apparent errors. If they find such an error, they note it and route the case to a Deputy Vice Chairman. He has a Senior Attorney carefully and thoroughly review the entire case and make recommendations as to proper action. While most of the errors are minor, an occasional serious one is detected and corrected before the decision is dispatched. When we started this full review of completed decisions, the indexers noted minor errors--mostly typographical--in about 30 percent of the cases. At the present time about 13 percent of the decisions are sent to the Deputy Vice Chairman for detailed review. We feel that the time and effort spent for this review procedure has paid off handsomely in improved quality and accuracy of our appellate decisions.

INDEPENDENT MEDICAL EXPERT OPINIONS

Another area that I am stressing is the use of Independent Medical Expert (IME) opinions. We note that the allowance rate in decisions that incorporate IME opinions is higher than the others. There are several reasons for this. First, these cases involve either complex or controversial medical issues. As such they are singled out by representatives or by Board Members because of their unusual nature and because they appear to be meritorious. A good IME opinion can be of great help to us in solving difficult questions of etiological relationships between diseases and conditions, the health effects of certain types of

military experiences, and the correct diagnosis of a given disability. At this time we are using 73 top medical institutions in the IME program. Because of the success and acceptance by case advocates of IME opinions, I am encouraging the Sections to increase their use of these opinions wherever appropriate. A bonus on this program is the fact that the opinions themselves prove to be of great value as research material in subsequent cases involving the same disease process. These opinions are obtained pursuant to 38 U.S.C. § 4009. Similarly, we use the services of the Armed Forces Institute of Pathology (AFIP) whenever we need an expert opinion in their areas of expertise.

REQUESTS FOR MEDICAL EXPERT OPINIONS

	1977	1978	1979	1980	1981
IME Opinions	129	131	182	147	117
AFIP Opinions	43	70	43	64	67

BVA DECISIONS INCORPORATING MEDICAL EXPERT OPINIONS

Number	188	230	179	295	164
Allowance Rates (Percent)	34.6	38.7	38.0	39.3	27.4

This concludes my written testimony. If you have any additional questions I will be happy to answer them.

TESTIMONY OF GABRIEL P. BRINSKY

Good morning Mr. Chairman. AMVETS appreciates this opportunity to appear before you today to express its views concerning the performance and workloads of the Board of Veterans Appeals.

Anyone who has a veterans' constituency is well aware of the fact that the Board of Veterans Appeals has a workload problem. Over the past three years the number of appeals received increased by more than 5 thousand, making the total approaching 41 thousand. To cope with this situation, the Board over the past years has gone from 14 to its present 17 Sections. Even so, the Board is losing ground in the battle of cases. It is projected that for fiscal year 1982, the Board will receive 40,890 appeals. At an average daily output of 96 cases per day, this translates into approximately 14 months of work.

It is not our intention to burden the Committee with figures which I am sure have been furnished in full detail by the Board of Veterans Appeals. We would like to comment, however, upon the processing time involved by citing the number of days required on an average to get a decision from the Board. It takes 478 days, or approximately 14 months, from the time an appellant files his appeal until a decision is entered by the Board of Veterans Appeals.

It is imperative that something be done to reduce this processing time which in reality affects due process.

The Board has increased its personnel in attempts to meet the problems created by this over workload. While we believe that adjustments of this type are necessary in order to meet the demands imposed, obviously the solution cannot rest in adding personnel ad infinitum. Other avenues must be searched for and a resort to other means.

Following World War II, the Board of Veterans Appeals then under the Chairmanship of Robert L. Jarnagin, was handling 60 thousand appeals a year with a staff much smaller than we have today. Of course, the decisions entered at that time were not as developed and as lengthy as those which are promulgated by the Board today. At that time, it was not necessary to set forth separately stated findings of facts and conclusions of law. It was not necessary to set forth the controlling laws and regulations that applied in the individual case. It was not necessary to fully explain the rationale or to set forth or evaluate the evidence in the decision. Today, these factors and items must be reflected in the decision as mandated by law. This came about by reason of the hearings held on judicial review. In a sense of compromise, perhaps, it was decided that these mechanisms would at least partially cure what deficiencies existed in the Board's decisions.

When the Board was faced with the tremendous workload and a relatively small group of consultants and boards to handle it following World War II, even though the decisions were not comparable in format to the decisions as we know them today, the Chairman had a decision to make. Would the Board continue to write decisions in the same length as they were and continue the struggle with a big backlog which translated into long periods of processing time, or would he shorten the decisions and thereby lessen the time to promulgate a decision. If he were to shorten the decisions this was not to affect the quality of the review which was conducted in determining the merits of the case. It would merely lessen the administrative requirements for reflecting the correctness of the decision.

I understand that the then Chairman asked the service organizations whether they desired longer decisions and longer processing time or shorter

decisions and shorter processing time. They opted for the shorter processing time.

I cite this historical background to demonstrate that the position in which the Board finds itself today is not a unique one and in fact had experienced more troublesome periods in terms of case loads than it does today. The other point is that there are times when we cannot have our cake and eat it too. We feel that compromises are going to have to be made. We are speaking of compromises which will in no way affect the quality of the review that is conducted. Any short cuts which would be effected would be in the administrative or mechanical processing of the decision. There would be no reduction in time or effort in the review of a claim to determine its merits.

With the Committee's indulgence, I would like to reflect a moment on the process involved in entering a decision by the Board of Veterans Appeals. The appeal is reviewed by a consultant to the Board who prepares a decision, seeking whatever medical or other assistance he needs, to do so. He dictates the decision. The longer it is the longer it takes him to prepare. The longer it is the longer it takes for a transcriber to transcribe it. And once it is submitted to the Section of the Board, the longer it takes for each of the three members of the Board to review that decision making whatever corrections and additions or changes that he or she sees fit. If the decision is returned to the consultant for revision along the lines indicated, it must be redictated. The longer it is the longer it takes them to do so. The transcriber transcribes the redictation and the longer it is the longer it takes her. The decision goes back into the Section of the Board which is reviewed by the members. Again, the longer it is the longer it takes.

In certain cases, however, much of this may be eliminated. For example, the Board receives a substantial number of appeals on the issue as to whether the evidence submitted is new and material. The same issue may have been presented in the same case 2, 3, or more times previously. Under such circumstances, rather than resorting to the usual format of the decision, the Board might depose of the issue in a one sentence or a one paragraph finding and a decision that the evidence submitted does not constitute new and material evidence. Exceptions for full treatment can be made in those cases where the Board feels that reasonable arguments or contentions have been advanced in favor of the case warranting a fully rationalized decision.

The same is true on questions of whether an appeal has been timely filed. A decision setting forth the facts and the controlling laws and regulations may not be necessary. The Board should be able to declare in a one-line decision that the appeal has not been timely filed and refuse to assume jurisdiction.

In another area, the law provides that the Board may reconsider its prior decision based upon an allegation of error in law or fact. A request for a personal hearing may be requested within a year. The Board has been most generous in its interpretation of these provisions of the law in order to insure that the appellant has been given every possible consideration. While the number of reconsiderations by the Board are relatively minimal, averaging somewhere in the neighborhood of 600 cases a year, nonetheless these cases are time consuming. As a suggestion, the Board should strictly adhere to the law and decline to grant hearings where the requests have been made more than a year after entry of the decision. It should also

deny reconsideration unless there are specific allegations of error in law or fact rather than merely an expression of a difference of opinion in the evaluation of the evidence. Reconsideration of a Board's decision is made by a six-member panel. A request for such should be limited to cases with potential merits.

Except in those cases where the evidence is in dispute, and these should be in the absolute minority, there is no reason why the Board should not enter its decision and eliminate the heading of the evidence and merely proceed to findings of facts and conclusions of law after citing the controlling laws and regulations.

It would appear that the need for the formal format decision is not present when a decision allows an appeal in certain cases. For example, a memorandum decision might be promulgated in an increased rating case. It would declare, as an example, that the Veterans Administration examination disclosed a disfiguring scar on the face which is ratable as 10 percent under Code 7800 and therefore the appeal is allowed with a ten percent evaluation assigned effective 6/1/81, the date of VA examination.

I am sure that Kenneth Eaton, Chairman of the Board of Veterans Appeals, and Roger Bauer, Vice Chairman, are aware of the possibilities of the suggestions which I have made today. They have probably considered them. The purpose for my recitation of these potentials is to offer whatever assistance that we can in helping the Board to accomplish its mission and to urge whatever legislative changes may be required to accomplish them.

STATEMENT OF
JOHN F. HEILMAN
NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE VETERANS AFFAIRS COMMITTEE
JUNE 24, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 719,000 members of the Disabled American Veterans, I am pleased to appear here today to present the views of our organization on the timeliness and quality of the appeals processing function in the Board of Veterans Appeals of the Veterans Administration.

Mr. Chairman, the DAV commends you and the members of the Subcommittee for holding this hearing. Clearly, this reflects the sincere interest and concern of the Subcommittee relative to the manner in which the VA's appellate process serves our nation's veteran population.

As you know, Mr. Chairman, the DAV's primary interest is in the welfare of America's service-connected disabled veterans, their dependents and survivors. However, DAV services are not restricted solely to the service-connected veteran as we offer counseling and representation to all veterans, their dependents and survivors in any claim they may pursue for benefits administered by the Veterans Administration.

In order that we can provide representation to those veterans and their dependents who desire our services, the DAV employs some 278 full-time, professionally trained claims representatives in 68 offices throughout the country. These National Service Officers (NSOs) are physically located in and/or regularly visit most VA Regional Offices and VA medical facilities. To insure that each individual VA claimant receives complete and thorough DAV representation throughout the claims processing system, the DAV also maintains a National Appeals Office here in Washington, D. C.

The function of this office is to represent VA claimants who have received adverse benefit determinations and who have filed an appeal with such decisions. Presently, our National Appeals Office is manned by nine highly skilled National Appeals Officers who, collectively, have over 80 years of experience in VA claims work. In 1981, this DAV staff had power of attorney and represented 38% of all BVA decisions entered--more than all of the other veteran service organizations combined (see attachment "A", Board of Veterans Appeals Representation in Appealed Cases).

Mr. Chairman, the DAV views the objectives of the VA appellate program, as outlined in MBVA-1, Change 16 (February 18, 1977), in accordance with what should be expected from an appellate body of last resort:

1.01 Objectives of the Appellate Program

A. Major. The major objective is to equitably decide appeals under all laws administered by the VA, with sympathetic understanding and as expeditiously as possible consistent with quality, in order to grant all benefits to which veterans and their dependents are entitled.

B. Specific. Specific objectives are:

1. To promulgate quality decisions which are equitable, comprehensive, fully reasoned and self-sustaining.

2. To maintain a high level of promptness in deciding appeals consistent with the quality of decisions expected of an appellate agency of last resort.

Mr. Chairman, aside from an Administrative Service which handles support functions and activities, BVA appeals are primarily addressed by a Professional Service presently composed of 17 Board Sections (authorized personnel on hand are 16 Sections, the 17th having been added and manned by existing personnel due to increased case load).

Each Board Section is composed of three members: a chief member (attorney), a medical member (physician) and a legal member (attorney). In addition, each Section has assigned to it six or seven "attorney reviewers" and a secretary. Professional Service personnel presently number 186 (BVA Administrative Service personnel presently number 142).

Mr. Chairman, with one three year period exception, the case load of appealed decisions handled by BVA has been steadily on the upswing for the past ten years (see attachment "B", VA Appellate Workloads, 1972-1983). In Fiscal Year 1981, a record breaking total of 68,183 appeals (Notices of Disagreement) were filed by VA claimants nationwide. Of this figure, 39,702 substantive appeals were received by BVA and 33,461 decisions were rendered. Substantive appeals pending at the end of 1981 totalled 31,810 (compare this figure to the 12,760 substantive appeals pending at the end of 1972).

One might expect that a steadily increasing case load, without a concurrent appropriate increase in personnel, would result in delay in the decision making process. This has occurred. In 1975, the average length of time involved from filing of an appeal (NOD) to BVA decision was 250 days--just over 8 months. Today that time frame has increased to 427 days--over 14 months. The first 7 months of this time is "charged" to the claimant and local station of jurisdiction (getting the appeal "ready" for BVA), the balance of the time is charged to BVA.

In terms of case disposition, the attached data (attachment "C", Board of Veterans Appeals Representation in Appealed Cases) reflects an annual allowance rate that, except for one significant

three year period, has remained fairly constant over the last ten years. The highest allowance rate occurred in 1975--14.8%--and the lowest allowance rate occurred in 1980 and 1981--12.4%. The average allowance rate over the past decade has been 13%. Upon setting aside remanded cases and "other" types of dispositions (which account for approximately 15% of all cases), we find that approximately 72% of all decisions rendered in a given year involve a denial of benefits sought.

Mr. Chairman, upon examining these categories of data--BVA personnel, case load, timeliness and disposition--one can reach the obvious conclusion that BVA is shorthanded. No one denies this, least of all BVA itself. BVA acknowledges, that in order to handle and control the existing heavy case load, "quotas" have been set for all Board Sections--quotas that presently require 40 decisions per week per Section. At this rate, an eight hour day requires eight decisions--in other words, an average reviewing time of one hour per case (attorney reviewers assigned to Board Sections do spend more time per case).

Mr. Chairman, we find this to be deplorable. Many appeals, certainly ones involving complex legal and medical issues, cannot even be read in an hour's time, much less evaluated and decided. And in saying this, I hasten to underscore that the DAV is

casting no aspersions on BVA personnel, their professionalism and/or dedication. BVA faces and performs a monumental task with the resources that are available. But the plain fact of the matter is BVA case load is high and rising, while BVA itself is under strength in personnel. Under these conditions, BVA cannot devote adequate time in consideration of appealed decisions. This can only have an adverse effect upon the quality of these decisions and, hence, upon the benefit entitlement of our nation's disabled veterans, their dependents and survivors.

The attached statistical data, we believe, supports this allegation.

During the so-called "peak" Vietnam years (1972-73), BVA had 14 Sections to handle its case load. As the data reflects, this case load was significantly less than the number of cases presently being handled by the personnel of today's 16 authorized Sections.

You will also note that in 1974-75, there was a substantial drop in BVA case load. In response to this decreased activity, BVA reduced its Sections back to 13. By mid 1975, the number of appeals again began to rise, necessitating the reactivation of Section 14. The case load increase continued and two more Board Sections (the 15th and 16th) were added in 1977. Budgetary

pressures necessitated reducing the number of Board Sections to 15 in 1980, however, in 1981 authorization was given to restore that 16th Section. As indicated earlier, BVA presently instituted a 17th Section staffed with existing personnel.

Mr. Chairman, if you will now note the favorable decision allowance rate in the years when BVA personnel were adequate in number to meet the task--the Vietnam peak year of 1973 and the years '74 and '75 when the case load decreased--you will find an allowance rate of 13.9%, 14.0% and 14.8%--by far the highest allowance rates in the entire decade. From 1976 through 1981, a period during which increasing case load placed mounting pressures on BVA personnel, the allowance rate steadily declined (1977 did have a very slight 2/10ths of 1% increase over 1976, but do not forget that two Board Sections were added in 1977 due to the steadily increasing case load). The years 1980 and 1981 have seen the lowest allowance rate in 10 years--12.4%.

Mr. Chairman, there is no doubt in our minds regarding the correlation between BVA case load, staffing and case disposition. So long as BVA personnel must labor in a pressure filled atmosphere that demands end products and fulfillment of case load quotas, allowance rates will continue to be "depressed." The data reflects this. If, as we contend, inadequate BVA staffing

levels promote denial of some "border line" appeals that would be favorably resolved given more consideration and/or development time, then each year hundreds of BVA claimants are not receiving due process from the system.

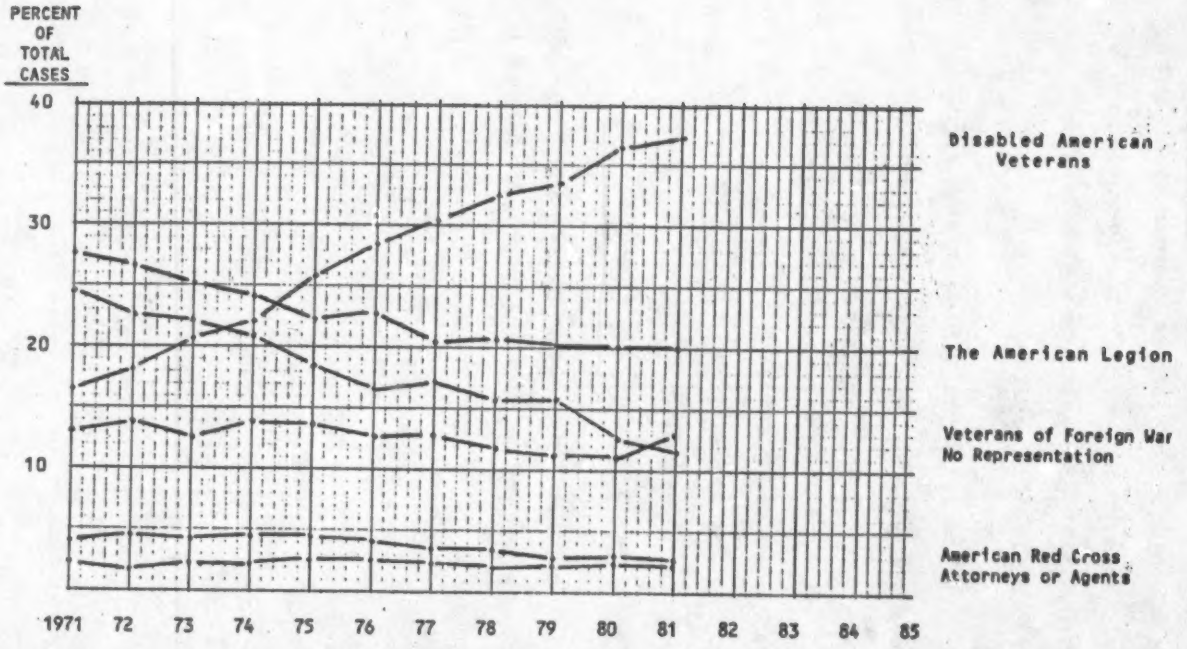
Mr. Chairman, if you find this assessment of the situation to be valid, we urge the Subcommittee to support increased appropriations for additional BVA Professional Service personnel. We believe that the current BVA case load and future projections of that case load justify the addition of 4 Sections to BVA, increasing the number from 16 to 20 Sections. We strongly feel such action is necessary if VA claimants are to receive prompt, comprehensive, sympathetic and equitable benefit determinations.

This completes my testimony, Mr. Chairman, thank you very much for allowing the DAV to participate in today's important proceedings.

ATTACHMENT "A"

BOARD OF VETERANS APPEALS
REPRESENTATION IN APPEALED CASES

November 12, 1981



ATTACHMENT "B"

VA APPELLATE WORKLOADS 1972-1983

	1972	1973	1974	1975	1976	1977
Notices of Disagreement Filed	54,189	50,381	43,205	45,663	53,073	62,176
Substantive Appeals Received	30,186	29,159	24,922	26,611	30,944	38,131
BVA Decisions Entered	29,692	29,825	26,209	25,027	28,482	33,296
Substantive Appeals Pending - End of Period	12,760	12,094	10,807	12,391	14,853	19,688

	1978	1979	1980	1981	Est. 1982	Est. 1983
Notices of Disagreement Filed	66,464	61,097	63,700	68,183	70,500	70,700
Substantive Appeals Received	38,346	35,688	36,483	39,702	40,890	41,000
BVA Decisions Entered	35,634	34,972	34,030	33,461	35,000	35,000
Substantive Appeals Pending - End of Period	22,400	23,116	25,569	31,810	37,700	43,700

ATTACHMENT "C"

BOARD OF VETERANS APPEALS
REPRESENTATION IN APPEALED CASES

REPRESENTATION	TOTAL	%	ALLOWED	%	REMANDED	%	DENIED	%	OTHER	%
FY 1972										
None	6770	22.8	737	10.9	851	12.6	5078	75.0	104	1.5
Nat'l Svc Org	22382	75.3	2923	13.1	3385	15.1	15881	71.0	193	0.9
Atty/Agents	571	1.9	74	13.0	88	15.4	400	70.0	9	1.6
TOTAL	29723	100.0	3734	12.5	4324	14.6	21359	71.9	306	1.0
FY 1973										
None	6629	22.2	748	11.3	962	14.5	4798	72.4	121	1.8
Nat'l Svc Org	22561	75.6	3306	14.7	3826	17.0	15272	67.7	157	0.7
Atty/Agents	635	2.1	85	13.4	140	22.0	390	61.4	20	3.2
TOTAL	29825	100.0	4139	13.9	4928	16.5	20460	68.6	298	1.0
FY 1974										
None	5500	21.0	619	11.3	745	13.5	4023	73.2	113	2.0
Nat'l Svc Org	20145	76.9	2968	14.7	3340	16.6	13693	68.0	144	0.7
Atty/Agents	564	2.1	94	16.7	105	18.6	347	61.5	18	3.2
TOTAL	26209	100.0	3681	14.0	4190	16.0	18063	68.9	275	1.1
FY 1975										
None	4637	18.5	549	11.8	629	13.6	3279	70.7	180	3.9
Nat'l Svc Org	19783	79.0	3056	15.4	3260	16.5	13233	66.9	234	1.2
Atty/Agents	607	2.4	100	16.5	102	16.8	395	65.1	10	1.6
TOTAL	25027	100.0	3705	14.8	3991	15.9	16907	67.6	424	1.7
FY 1976										
None	4753	16.7	468	9.9	703	14.8	3509	73.8	73	1.5
Nat'l Svc Org	23063	81.0	3064	13.3	3951	17.1	15959	69.1	89	0.4
Atty/Agents	666	2.4	90	13.5	105	15.8	465	69.8	6	0.2
TOTAL	28482	100.0	3622	12.7	4759	16.7	19933	70.0	168	0.6
FY 1977										
None	5730	17.2	589	10.3	956	16.7	4121	71.9	64	1.1
Nat'l Svc Org	26827	80.6	3547	13.2	4120	15.4	18678	69.6	82	0.3
Atty/Agents	739	2.2	98	13.3	144	19.5	493	66.7	4	0.5
TOTAL	33296	100.0	4234	12.7	5220	15.7	23292	71.1	150	0.5
FY 1978										
None	5662	15.9	604	10.7	923	16.3	4074	72.0	61	1.0
Nat'l Svc Org	29264	82.1	3756	12.8	3726	12.7	21674	74.1	108	0.4
Atty/Agents	708	2.0	96	13.6	123	17.4	484	68.8	5	0.7
TOTAL	35634	100.0	4456	12.5	4772	13.4	26232	73.6	174	0.5
FY 1979										
None	5571	15.9	611	11.0	717	12.7	4189	75.2	60	1.1
Nat'l Svc Org	28657	81.9	3734	13.0	3934	13.7	20838	72.7	151	0.5
Atty/Agents	744	2.1	86	11.6	116	15.6	536	72.0	6	0.8
TOTAL	34972	100.0	4431	12.7	4761	13.6	25563	73.1	217	0.6
FY 1980										
None	4314	12.7	482	11.2	586	13.6	3188	73.9	58	1.3
Nat'l Svc Org	28978	85.2	3626	12.5	4198	14.5	20939	72.3	215	0.7
Atty/Agents	738	2.2	118	16.0	108	14.6	503	68.2	9	1.2
TOTAL	34030	100.0	4226	12.4	4892	14.4	24630	72.4	282	0.8
FY 1981										
None	3927	11.7	422	10.8	578	14.7	2874	73.2	53	1.3
Nat'l Svc Org	28759	86.0	3643	12.7	4034	14.0	20867	72.6	215	0.7
Atty/Agents	775	2.3	87	11.2	118	15.2	564	72.8	6	0.8
TOTAL	33461	100.0	4152	12.4	4730	14.3	24305	72.6	274	0.7

VETERANS OF FOREIGN WARS OF THE UNITED STATES

OFFICE OF THE DIRECTOR

STATEMENT OF

JAMES N. MAGILL, SPECIAL ASSISTANT
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO
PERFORMANCE AND WORKLOADS OF THE BOARD OF VETERANS APPEALS

WASHINGTON, D. C. JUNE 24, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the privilege of appearing before this distinguished Subcommittee to present the views of the Veterans of Foreign Wars of the United States regarding the timeliness and quality of the claims and appeals process administered by the Board of Veterans Appeals of the Veterans Administration. We would also like to take this opportunity to congratulate you, Congressman Applegate, on being elected Chairman of the Subcommittee on Compensation, Pension and Insurance. This Subcommittee has demonstrated a sincere interest in our nation's veterans and we look forward to working with you in preserving and improving their earned benefits.

The VFW employs approximately one-hundred Service Officers and many claims consultants to represent veterans, their dependents and survivors before the Veterans Administration for the purpose of securing and maintaining for those individuals the various VA benefits they may be entitled to receive. The opinions expressed in this statement are a result of their knowledge and involvement in the claims processing procedure and their commitment to compassionate service in meeting their

★ WASHINGTON OFFICE ★
VFW MEMORIAL BUILDING ● 200 MARYLAND AVENUE, N.E. ● WASHINGTON, D. C. 20002 - 5799 ● AREA CODE 202-543-2239

professional goals.

At the outset, Mr. Chairman, we would like to commend the efforts of those VA employees who strive to make the claims process a workable one. Despite the various and often extreme pressures they face, these individuals, for the most part, are rendering compassionate and fair judgments to veterans involved in the appeal of previous decisions. We must, however, take time to comment on the timeliness of the appeals procedures at BVA level. As we have stated in previous appearances before this Subcommittee, this is a problem that needs to be rectified.

When the case work for the appeal is completed at the Regional Office, an average of seven months transpires before the BVA renders a decision. Under this system, the Regional Office does not immediately send the case to the BVA but maintains the file in a "call-up" status until the BVA's work schedule allows for its consideration. At the present time, the "call-up" status is averaging about 3½ months, and we have no objection to the Regional Office maintaining the file during this period, inasmuch as additional supportive information may be added to the claim file during this time. Even though the BVA does not have the case in its possession during this "call-up" stage, the time consumed is charged to the BVA. Once the case actually arrives at the BVA, the processing time averages an additional 3½ months. This period, coupled with the "call-up" stage, averages seven months. We believe both these time frames are much too long.

Mr. Chairman, the VFW believes a contributing factor in the unacceptable length of time it takes to process an appeals case is the statutory ceiling, limiting the number of members to fifty who may sit on the board. Considering the number of appeals received by the Board of Veterans Appeals (almost 40,000 in FY '81), it is no wonder there is such a lengthy "call-up" period. In addition to the preceding, there has been an increase in the number of appeals pending before the Board at the end of the year. In fact, as the economy worsens, the historical pat-

tern would suggest the BVA could very well experience an increase in its caseload. As a potential means to help reduce the unacceptable overall appellate time period, the VFW would support legislation to increase the statutory limitation of membership on the Board of Veterans Appeals as mandated by 38 USC 4001. Increasing the number would allow more cases to be reviewed, thus reducing the overall appeal time period and specifically the "call-up" stage. It should be noted the VFW commends the action of the BVA in its efforts to gain the necessary funds and staff to reinstate a sixteenth section at the beginning of FY '81, and also, the efforts of the new BVA Chairman, Kenneth E. Eaton, for organizing from existing staff a skeletal seventeenth section; thus enhancing the Board's decision-making capabilities.

Finally, Mr. Chairman, we would like to bring to the Subcommittee's attention the remand rate which, in our opinion, still remains high. The most recent information available to us indicates the rate was in excess of 14% in FY '81. While we appreciate the Board's conscientiousness in returning cases to a Regional Office when it's found appropriate, we believe the remand is necessitated, in many cases, by the length of time involved in the appeals procedure.

In closing, Mr. Chairman, it is our opinion the BVA, is rendering compassionate and high-quality decisions. We only hope the pressures of an extremely heavy workload and desire to render these high-quality decisions under existing conditions will not cause the Board to be less compassionate.

This concludes my testimony. I will be happy to respond to any questions you may have.

○